

**TENNESSEE STATE BOARD OF EQUALIZATION**  
**BEFORE THE ADMINISTRATIVE JUDGE**

IN RE:	Bobby Parker	)	
	Dist. 3, Map 90, Parcel 128.03	)	Bedford County
	Commercial Property	)	
	Tax Year 2005	)	

**INITIAL DECISION AND ORDER**

*Statement of the Case*

The Bedford County Assessor of Property ("Assessor") valued the subject property for tax purposes as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$161,900	\$1,384,800	\$1,546,700	\$618,680

An Appeal has been filed on behalf of the property owner with the State Board of Equalization on August 17, 2005.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on October 18, 2006. The hearing was held at the State Board of Equalization's Office on the 17th floor of the James K. Polk Building. Present at the hearing were Mr. Bobby L. Parker, Jr., the taxpayer, who represented himself, Ms. Rhonda Helton Clinton, Bedford County Property Assessor, who was represented by Mr. Robert T. Lee, General Counsel for the Division of Property Assessments and Mr. Robert Spencer, III, CAE, Regional Appraisal Supervisor also from the Division of Property Assessments.

There are two primary issues presented for this appeal. The first, the taxpayer objects to valuation of his property by the County Assessor; and the second, the taxpayer objects to the County combining the parcels that comprised the total parcel of land that the subject apartment complex sits on.<sup>1</sup>

*Findings of Fact and Conclusions of Law*

The subject property consists of an apartment complex located on 1901 Wartrace Pike, Shelbyville, Tennessee, d/b/a (doing business as) Stone Brooke Apartments.

In compliance with the Status Conference Order each party submitted an appraisal of the subject property. However, Mr. Parker objected to his own appraisal being used as substantive evidence because the appraiser was not present to answer any questions that

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<sup>1</sup> This complex is composed of five (5) buildings with eight (8) units in each building. It was stipulated and agreed that there are three (3) buildings and a garage on one tract- 128.01 and two (2) buildings on the other tract-128.03. Some buildings actually set on both parcels.

may have arisen during the course of the hearing. Therefore, pursuant to the objection the appraisal of Mr. Spencer is the only one that will be considered in the deliberation of this case.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) provides (in relevant part) that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values...."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). In appraising real estate for market value, there are three (3) approaches to value. The cost approach, the sales comparison approach and the income capitalization approach. However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

In this case the Stone Brooke Apartments is an income producing enterprise and therefore an analysis of the income approach is the preferred method for determining the market value of this category of property. Mr. Parker continually argues that his property is valued higher than other similar properties in Bedford County and he has to pay more taxes than other businesses like his.<sup>2</sup> His presentation included producing copies of the tax bills for other apartment complexes in an attempt to show he was assessed higher than others.

The case law is replete with cases that essentially hold that it is of no consequence how much or how little your neighbors' property is valued, but being able to demonstrate

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<sup>2</sup> Mr. Parker continually wants to know why his property is higher compared other apartment complexes in the area which he alleges are more modern with better amenities than his. He cannot understand why the Assessor does not have the information (taxes of other apartment complexes) readily available. Ms. Clanton explained that she has over 21,000 parcels of property in Bedford County and cannot remember every parcels value.

by competent evidence the fair market value of your own property that is essential in proving that County Boards values are incorrect.

As the Assessment Appeals Commission noted in *Payton and Melissa Goldsmith*, Shelby County, Tax Year 2001, in quoting the Tennessee Supreme Court in the case of Carroll v. Alsup, 107 Tenn. 257, 64 S.W.193 (1901):

It is no ground for relief to him; nor can any taxpayer be heard to complain of his assessments, when it is below the actual cash value of the property, **on the ground that his neighbors' property is assessed at a less percentage of its true or actual value than his own.** When he comes into court asking relief of his own assessment, he must be able to allege and show that his property is assessed at more than its actual cash value. He may come before an equalizing board, or perhaps before the courts, and show that his neighbors' property is assessed at less than its actual value, and **ask to have it raised to his own**, . . . (emphasis supplied)

The administrative judge finds that the fair market value of subject property as of January 1, 2005 constitutes the relevant issue. The administrative judge further finds that the Assessment Appeals Commission has repeatedly rejected arguments based upon the amount by which an appraisal has increased as a consequence of reappraisal. For example, the Commission rejected such an argument in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning in pertinent part as follows:

The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. . .

The Assessment Appeals Commission has ruled that taxes are irrelevant to the issue of value. See *John C. & Patricia A. Hume*, (Shelby Co., Tax Year 1991).

Since the taxpayer is appealing from the determination of the Bedford County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

While Mr. Parker presented documents showing his operating expenses<sup>3</sup> and "rent rolls" for 2002, 2003 and 2004, he did not produce any actual receipts or other documentation to substantiate his claim, even information from the general market was not presented.

After having reviewed all the evidence in this case; the administrative judge finds that the taxpayer has not sustained his burden.

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<sup>3</sup> Mr. Parker admitted in cross examination by Mr. Lee that the "operating expenses" are not actual expenses but a correlation of his expenses and the expenses of other apartment complexes in the Bedford County area that he obtained in his investigation of other apartment complexes. For example, when questioned about the contract cleaning that he has listed, he admitted that his daughter helps him and while he does not actually 'pay' her or himself for the services, the amount represents what other complexes deduct from their income. Similar explanations were used when he was questioned about office supplies, utilities and insurance cost.

While Mr. Parker wants to use other apartment complexes information to adjust or justify his figures and information, he fails to properly document even their expenses. This method does not comply with generally accepted standards of practice for the industry; this is not within the acceptable practice of determining market value.

Mr. Parker has not sustained that burden in this case; he has not proved by a preponderance of the evidence that the value affixed by the County Board is erroneous. Uniform Rules of Procedure for Hearing Contested Cases. Rule 160-4-1-.02 (7).

Even assuming arguendo that Mr. Parker had even made out a prima facie case the appraisal performed by Mr. Spencer using the income approach showed by a preponderance of the evidence that the values by the County Board are correct.

The next issue to be resolved in this appeal is the taxpayers objection to the County combining the original two (2) parcels into one (1) parcel for ad valorem tax purposes. This apartment complex is located on two (2) adjacent tracts of land with buildings or partial buildings on both tracts.

Mr. Lee on behalf of the County argues that the combination of the properties was in compliance with T.C.A. § 67-1-1005 (b) because a portion of the subject property had previously escaped taxation and that the County had a duty under the statute to "reassess" and include the information; additionally under T.C.A. §67-5-509(c), the corrections of assessments statute, the administrative judge notes that the County was following its obligations to the tax community at large. The Courts have often noted that:

It is a fundamental rule that all property shall be taxed and bear its **just share** of the cost of government, and no property shall escape this common burden, unless it has been duly exempted by organic or statute law; and that one claiming such exemption has the burden of showing his right to it. Cooley on Taxation (4th Ed.) sec. 672; American Bemberg Corp. v. Elizabethton, 180 Tenn. 373, 378, 175 S.W.2d 535; American Nat. B. & T. Co. of Chatta. v. MacFarland, 209 Tenn. 263, 352 S.W.2d 441, 443, 444. (emphasis supplied)

"Taxes are the life blood of civil government. The right of taxation is an attribute of sovereignty. It is inherent in the state, and essential to the perpetuity of its institutions; consequently he who claims exemption must justify his claim by the clearest grant of organic or statute law. Knoxville & O. R. Co. v. Harris, 99 Tenn. 684, 693, 43 S.W. 115, (Tenn. App. 1897).

The administrative judge finds that the arguments espoused by Mr. Parker are not persuasive. The County's obligation was met when the notice to Mr. Parker was properly sent; likewise he followed his statutory right to appeal to the State Board of Equalization. The assertion by Mr. Parker that "they should have done it sooner" is without merit when the notice was sent within the guidelines of the statute.

Order

It is, therefore, ORDERED that the following values be adopted for subject property for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$161,900	\$1,384,800	\$1,546,700	\$618,680

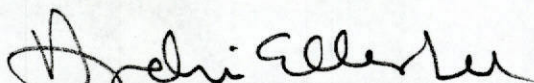
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 1st day of December, 2006.

  
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ANDREI ELLEN LEE  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Bobby Parker  
Robert T. Lee, Esq.  
Rhonda Clanton, Property Assessor